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Implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions

Report of the Secretary-General**

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* E/CN.15/2002/1.

** The delay in submitting the present report was occasioned by the need for a comprehensive analysis of the replies received.

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I. Introduction

1. In December 1996, the General Assembly, concerned at the seriousness of problems posed by corruption, adopted the International Code of Conduct for Public Officials (resolution 51/59, annex) and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (resolution 51/191, annex) and recommended them to Member States as tools to guide their efforts against corruption.

2. In its resolution 1998/21 of 28 July 1998, entitled "United Nations standards and norms in crime prevention and criminal justice", the Economic and Social Council requested the Secretary-General to prepare survey instruments on the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and the International Code of Conduct for Public Officials. Pursuant to that request, in late 1999 the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat sent two questionnaires concerning the above instruments to Member States. The present report contains an analysis of the replies received in connection with the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions.

3. The attention of the Commission on Crime Prevention and Criminal Justice is drawn to the fact that, because of the time elapse between the receipt of the responses to the survey and the preparation of the present report, the information contained below may not fully reflect the latest developments as regards the legislation of some of the States responding.

II. Results of the survey

4. Replies to the survey instrument on the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions were provided by 47 States: Algeria, Argentina, Austria, Belarus, Brazil, Brunei Darussalam, Bulgaria, Cameroon, Canada, Colombia, Costa Rica, Croatia, Czech Republic, Germany, Greece, Guatemala, Guyana, Iceland, Iraq, Italy, Japan, Kazakhstan, Lebanon, Lithuania, Luxembourg, Mali, Malta, Mauritius, Myanmar, New Zealand, Niger, Nigeria, Norway, Panama, Peru, Poland, Saudi Arabia, Singapore, Slovenia, South Africa, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and Yemen.

A. Existing legislation to combat corruption and bribery in international commercial transactions

5. More than half of the States responding reported that they had adopted legislation to combat corruption and bribery in international commercial transactions.[1] Among those countries, Argentina, Austria, Bulgaria, Canada, Costa Rica, the Czech Republic, Germany, Iceland, Japan, Nigeria, Norway, Panama, Slovenia and Switzerland had adopted relevant legislation between 1997 and 1999. Colombia reported the adoption of such legislation between 1995 and 1997, while Iraq, Italy, Lebanon, Mauritius, Myanmar, Singapore, Sweden and Yemen adopted such legislation prior to 1989.

6. Mali, Peru, South Africa and the United Kingdom replied that their legal systems did not refer specifically to corruption and bribery in international commercial transactions, but covered corruption in general. Peru indicated that it had signed and ratified, through Supreme Decree No. 012-97-RE, the Inter-American Convention against Corruption[2] which, inter alia, covered transnational bribery. The Prevention of Corruption Act of 1906 of the United Kingdom covered bribery of agents, in both the public and the private sector.

7. Brazil, Bulgaria, Colombia, Costa Rica, Croatia, the Czech Republic, Germany, Italy, Lithuania, Luxembourg, Mauritius, New Zealand, Norway, Poland, Slovenia, the United Kingdom and Yemen responded that relevant legislation to combat corruption and bribery in international commercial transactions had been proposed.[3]

B. Criminalization of bribery of foreign public officials

8. A majority of States replied that their legal systems criminalized the bribery of foreign public

officials by nationals, such as individuals, private corporations, public corporations and national corporations.[4] However, in Argentina, Austria, Bulgaria, the Czech Republic, Sweden and Switzerland such bribery is a criminal offence only for individuals.

9. Among the countries that replied that their respective legal systems did not criminalize bribery of foreign public officials by nationals, Luxembourg indicated that a related law had been presented to Parliament and was about to be adopted.

10. The replies provided show that, in countries in which the bribery of foreign public officials was criminalized, such an offence was punishable with imprisonment,[5] ranging from a minimum of one year (Norway) to life imprisonment (South Africa).[6] Several countries foresaw additional forms of sanction such as fines;[7] disqualification from holding public office (Argentina); loss of honorary titles, loss of military rank, expulsion, prohibition of residence, forfeiture of property and publicly beneficial work (Czech Republic); partial or total deprivation of civic and political rights (Niger); dismissal, reduction in rank, adjustment of remuneration, deferment of increment, stoppage of increment or reprimand (Trinidad and Tobago);[8] deprivation of electoral rights (United Kingdom); and confiscation of the proceeds derived from the bribery (Yemen). Aggravating circumstances were foreseen if the offender was a public official (Germany, Iceland and Italy) and if the offender was a recidivist (Saudi Arabia).

11. In the period from 1996 to 1998[9] prosecutions for bribery of foreign public officials were undertaken in Cameroon, Italy, Lebanon, Slovenia[10] and South Africa[11] and sentences were pronounced in Cameroon, Italy, Lebanon and Slovenia.[12] None of the countries replying indicated that there had been any legal transaction (i.e. payment of a fine) to avoid prosecution for the bribery of foreign public officials.[13]

C. Tax deductibility of bribes

12. Half of the countries replying reported that their legal systems did not include provisions to make it impossible for individuals to obtain tax benefits or deductions for payments outside their countries that would constitute bribery or other inappropriate payments to foreign public officials.[14]

13. On the other hand, Bulgaria, Canada, the Czech Republic, Germany, Nigeria, Norway, Slovenia, South Africa, Sweden, Switzerland and the United Kingdom indicated that their legal systems did include such provisions.

14. The tax legislation of Bulgaria did not allow the deductibility of bribes paid to foreign public officials. Donations and expenses that were tax deductible were enumerated exhaustively in the Corporate Income Tax Law (art. 23, para. 3). In Canada the offence of bribing a foreign public official[15] had been added to the list of offences found in section 67.5 of the Income Tax Act in order to deny the claiming of a bribe payment as a deduction. According to the legislation of the Czech Republic, a bribe payment was not considered an expense that could be deducted, that is, an expense necessary for generating, assuring and maintaining taxable income. The tax authorities have to report any evidence of bribery to law enforcement bodies.

15. Iceland noted that article 52 of Act No. 75/1981 on Tax on Income and Capital (the Tax Act) had been amended by Act No. 95/1998, which expressly provided that the following items could not be declared operating expenses or a deduction from taxable income: "payments, gifts or other contributions that are unlawful under article 109 of the General Penal Code, to persons engaged or elected to discharge an official, legislative or executive function, in Iceland, in other States, or with international organizations or institutions to which national States, governments or international institutions are parties". The provision applied to all taxable parties, private individuals and legal persons, including non-incorporated companies. The provision would be applied without regard to whether the person had been convicted of an offence against article 109 of the Penal Code, which criminalized the giving, the promise or offer to a public official, including a foreign public official or an official of a public international organization, of a gift or other advantage in order to induce him or her to take an action or to refrain from an action related to his or her official duty.

16. The Government of Singapore indicated that the Income Tax Act did not provide specifically for the non-deductibility of bribes paid to foreign public officials. However, such payments would not be tax deductible, as they did not fall within the conditions that had to be satisfied for tax deduction. Slovenia

reported that its domestic legislation governed, by a number of regulations,[16] the field of bookkeeping of business and tax liabilities in such a way that any possibility of paid bribes to be claimed as tax allowances was excluded. In Sweden, the Municipal Income Tax Act denied the deductibility of bribes and there were no exceptions to that denial. Likewise, the Swiss Federal Law on Prohibition of the Tax Deduction of Secret Commissions of 22 December 1999 stated that "secret commissions, within the meaning of Swiss criminal law, paid to Swiss or foreign public officials are not deductible and are classifiable as charges justified by commercial practice".

17. The United Kingdom indicated that section 577 denied relief for business entertaining and hospitality and all gifts. If a payment was described as a fee for services or a commission, the tax inspector was entitled to ask what the services in question were, and in case the fee or commission was excessive, the inspector could seek to disallow all or part of the payment as being a gift, without having to allege that the payment was corrupt in nature. Payments that were themselves criminal (in this case, bribes) were not tax-deductible, provided that the United Kingdom had jurisdiction over the offence. However, in accordance with the instructions given to tax inspectors on the application of section 577 on criminal payments, when such activities were outside the jurisdiction of the United Kingdom so that a payment could not be caught under domestic criminal law, the payment could be disallowed under section 577 "because they are gifts, or hospitality, or business entertaining".

D. Illicit enrichment

18. A majority of States replied that their legislations made illicit enrichment by public officials,[17] including elected representatives,[18] an offence.

19. Algeria indicated that, according to Order No. 156-66 of 8 June 1996, acts of illicit enrichment by public officials, including by elected representatives, could be determined under various forms of criminal offences, in particular treachery, transfer of public funds, abuse of power, bribery, acceptance of commissions from contracts, auctions or tenders committed at the time when the defendant was in office. The Penal Code of Argentina, under its article 268, paragraphs 1-3, punishes illicit enrichment by public employees and officials with imprisonment and disqualification from holding public office. The same applies to elected representatives, as the definition of public official provided in the Penal Code includes elected representatives. Austria indicated that, under its domestic law, there was no specific definition of the offence "illicit enrichment by public officials". However, section 20 of the Penal Code foresaw the criminalization of "unlawful enrichment", which covered any citizen. On the other hand, the criminalization of illicit enrichment by elected representatives was covered by section 265 of the Penal Code.

20. In Brazil, the legal basis for the criminalization of the illicit enrichment by public officials, including elected representatives, was Law No. 8429 of 2 June 1992; in Bulgaria it was article 283 of the Criminal Code, according to which the use of an official position to acquire an unlawful benefit was punishable by imprisonment of up to three years. The same provision applied to elected representatives.

21. Colombia noted that article 148 of the Penal Code, amended by article 96 of Law No. 190 of 1995, established the offence of illicit enrichment by public servants. Under those provisions, a public servant who, by reason of his or her office or functions, obtained an unsubstantiated increase in assets, provided that the act did not constitute another offence, would be liable to a term of ordinary imprisonment of from two to eight years and a fine equivalent to the amount of the enrichment, and he or she would be barred from public office for the term of the main penalty. The same punishment would be imposed on an intermediary for aiding and abetting an unsubstantiated increase in assets. In accordance with the Constitution, all public servants elected by popular vote were, for criminal law purposes, included within the category of public servants.[19] Accordingly, the criminal offence of illicit enrichment by public officials was applicable to them, should they obtain an unsubstantiated increase in assets by reason of their office or functions.

22. Costa Rica indicated that the Law on Illicit Enrichment punished public officials who were obliged to declare their assets but failed to do so. In addition, article 346 of the Penal Code foresaw penalties of imprisonment, from a minimum of two months to a maximum of two years, for any public official who

accepted undue privileges, or promised undue influence, made use of public information for financial gain or could not explain the increase in his or her net worth after taking office.

23. In accordance with article 338 of the Penal Law of Croatia, any official or responsible person in bodies of state government and units of local self-government and bodies that performed public services, who used his or her position or authority by giving preference in public tenders, or by giving, taking over or agreeing business, in order to obtain proprietary profit for his or her private activity or for private activity of a family member, was punishable by imprisonment of not less than six months and not more than five years. Germany indicated that there was criminal liability for demanding, allowing oneself to be promised or accepting an advantage or offering, promising or granting an advantage in return for performance of an official duty. It was of no importance whether the advantage was conferred, or was to be conferred, on the public official himself or herself or a third person. The term "advantage" did not only cover money payments, but also included any benefit to which the public official had no claim and which, in objective terms, put him in a better position, either tangibly or intangibly, in his or her financial, legal or even only personal situation. Under German law, there was criminal liability when somebody proceeded to buy a vote in an election or ballot. The consideration given in return must correspond to a tangible advantage that was sufficiently measurable and that could be expressed in a sum of money or in monetary worth. The voting behaviour and the consideration given must be aimed at a specific illegal arrangement.

24. In Guyana, the criminalization of illicit enrichment by pubic officials and by elected representatives was regulated by paragraph (a) of the Code of Conduct of the Integrity Commission Act of 1997 and section 27 of the Integrity Commission Act of 1997, respectively. In Iceland, the above-mentioned offence was regulated by section 14 of the Criminal Code, which dealt with offences committed in public positions, and by articles 128, 129, 136 and 138 of the Criminal Code. In Iraq, the issue was covered by the Penal Code, the Civil Service Law and the Code of Conduct of State and Socialist Sector Officials, and in Lebanon by Law No. 154 of 27 December 1999 on illicit enrichment.

25. The Government of Lithuania indicated that the offence of illicit enrichment by public officials, including elected officials, was regulated by article 285 on office abuse; article 282 on accepting a bribe; article 283 on undue remuneration; article 284 on suborning; article 319 on commercial subornation; and article 320 on accepting an illicit payment. In Luxembourg, the relevant articles of the Penal Code covering this offence were those dealing with embezzlement, extortion and corruption (arts. 240, 241, 243, 251 and 256). Mali noted that a relevant law adopted in 1982 established that any person who was convicted of the crime of illicit enrichment was liable to penalties applicable to serious indictable offences. The same law applied to elected representatives.

26. In Myanmar, the Bribery and Corruption Act of 1998 made illicit enrichment by public officials an offence. In New Zealand, the Crime Act of 1961 covered both active and passive corruption of judicial officers, Members of the Executive Council, Ministers of the Crown, Members of Parliament, law enforcement officers and other officials. In addition, the Income Tax Act of 1994 provided various offences related to tax evasion. In Nigeria the offence was regulated by the Anti-Corruption Act, the Money-Laundering Decree and the Recovering of Public Property Act, and in Panama by article 335, paragraph 4, of the Criminal Code and article 5 of Law No. 59 of 29 December 1999. In Peru, illicit enrichment by public officials, including elected representatives, was covered by article 401 of the Criminal Code, which stated that any public official or civil servant who illicitly acquired wealth by reason of his or her position was subject to imprisonment for not less than 5 years and not more than 10 years.

27. Saudi Arabia indicated that the offence of illicit enrichment by public officials was provided for in Royal Decree No. 16 on the investigation of sources of enrichment. In South Africa, although illicit enrichment per se was not an offence, it could be regarded as corruption, which was regulated by section 1, paragraph 1, of the Corruption Act of 1992 (Act No. 94 of 1992). As far as elected representatives were concerned, the Executive Members' Ethics Act of 1998 (Act No. 82 of 1998) introduced a code of ethics governing the conduct of members of the Cabinet, deputy ministers and members of provincial executive councils. The Act required that Cabinet members, deputy ministers and members of executive councils

disclosed their financial interests, as well as gifts and benefits of a material nature received by them after the assumption of the office. South Africa's Public Protector was obliged to investigate any alleged breach of the code of ethics on receipt of a complaint.

28. In Sweden, illicit enrichment was covered in part by the provisions on bribery. Furthermore, the origin of the enrichment had to be disclosed, according to the taxation law. If the enrichment was illicit, action could normally be taken on the basis of the legal provisions on bribery. This also applied to elected representatives.

29. According to the domestic legislation of the former Yugoslav Republic of Macedonia, a public official who requested or received a present or some other benefit or accepted the promise of a present or some other benefit in order to perform an act within the framework of his or her own official duty that he or she should not perform, or to refrain from performing his or her official duty, could be punished with imprisonment of 1-10 years.

30. Trinidad and Tobago indicated that national legislation made illicit enrichment an offence only by certain public officials, such as police officers and customs officers. However, sections 76 and 78 of the Constitution included the following provisions, respectively, which applied to all public officials:

> "Except with the permission of the Commission, an officer shall not accept any gifts from any member of the public or from any organization for services rendered in the course of his official duties"

and

> "An officer who is offered a bribe shall immediately inform the Permanent Secretary or Head of Department who shall report the matter to the Police and advise the Commission".

As far as elected representatives were concerned, the Integrity in Public Life Act No. 8 of 1987 established that every person in public life, including members of the House of Representatives, ministers, parliamentary secretaries, permanent secretaries and chief technical officers, were required to file an annual declaration of income, assets and liabilities with the Integrity Commission. A person who failed to file a declaration or made a false declaration was guilty of an offence and was liable on summary conviction to a fine and imprisonment of two years.

31. The United Kingdom reported that the behaviour of illicit enrichment by public officials might constitute fraud or theft, which were criminal offences punishable by a fine and/or imprisonment for a maximum of 7 and 10 years respectively (Theft Act of 1968). It might also be considered corruption as defined in the Public Bodies Corrupt Practices Act of 1889. There was also a common law offence of misconduct in a public office that might apply. In addition, the United Kingdom indicated that the Government was considering the introduction of a new statutory offence of misuse of public office, which could cover illicit enrichment. The same provisions mentioned above applied to elected representatives.

32. In Yemen, illicit enrichment by public officials was covered by Crime and Penalty Law No. 12 of 1994, Law No. 6 of 1995 on the prosecution of persons holding high-ranking public office, Presidential Decree No. 3 of 1996 on Establishment and Terms of Reference of Public Property Courts, Judiciary Act No. 1 of 1991 and the draft law on financial responsibility and accountability. The offence of illicit enrichment by elected representatives was regulated by General Elections Law No. 14 of 1992 and the amendments thereto and Local Authority Law No. 24 of 2000.

E. Corporate criminal liability

33. The legal system of the majority of the countries included provisions to establish corporate criminal liability.[20]

34. In Algeria, according to article 5 of Order No. 22-96 of 9 July 1996, companies committing breaches, such as making false statements or failing to obtain the required licences, were penalized by fines up to fivefold the value of the damages together with the confiscation of the site of the offence. Austrian criminal law recognized only a very limited criminal responsibility of legal persons, since it was only possible to confiscate the proceeds of crime directly from a legal person if the legal person had been illegally enriched (see sect. 20, para. 4, of the Penal Code). Austria also indicated that it would shortly introduce into its legal system the responsibility of

legal persons, in accordance with the Second Protocol to the Convention on the Protection of the European Communities' Financial Interests of the European Union.[21] In Cameroon, corporate managers and other employees who infringe the penal law were liable to criminal prosecution and the corporate entity might also be held liable under civil law. In Canada, the offence of bribing a foreign public official could be committed by any person within the full meaning of "persons" as defined in section 2 of the Criminal Code.

35. Colombia indicated that the criminal liability of corporate entities as understood in other legislations did not exist in the country, since the Penal Code was based on the prerequisites of individual criminal liability. However, criminal law had in recent years incorporated provisions that made it possible to punish corporate entities engaging in unlawful activities (Law No. 365 of 1997). Under those provisions, if, at any time during criminal proceedings, the judicial official established proof that corporate entities, companies or organizations had wholly or partly engaged in unlawful activities, he or she might order the competent authority to withdraw its legal status or close its premises or commercial establishments. Legal entities in Croatia were not strictly criminally responsible, but could be held responsible for other types of violation. In Germany, non-criminal fines could be imposed on legal persons and associations and engagement in a trade could be prohibited where there was unreliability.

36. Iceland replied that, in order to fulfil the country's obligations under the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development,[22] the Parliament had enacted Act No. 144/1998 on Criminal Responsibility of Legal Persons on Account of Bribery of Public Officials. According to article 1 of the Act:

> "A legal person may be fined if its employee or staff member has, in order to secure or maintain business or other improper gain for the benefit of the legal person, given, promised or offered a public servant a gift or other advantage in order to induce the public servant to take a measure or to refrain from taking a measure within the sphere of his or her public duties. This shall also apply to such acts committed with respect to foreign public servants or officials acting for international institutions."

The general principles governing criminal liability of legal persons were laid down in Section II A, article 19 (a)-(c), of the Penal Code, and applied to criminal liability under Act No. 144/1998.

37. In Iraq, corporate criminal liability was reported to be regulated by article 80 of the Penal Code and by articles 213 and 214 of the Companies Law. In Italy, according to article 11 of Legislative Decree No. 300/2000, a criminal court could apply administrative sanctions to legal persons. In Japan, criminal liability could be placed on legal persons, including companies, according to the Unfair Competition Prevention Law. Criminal liability was based on the principle that the companies had not taken due care to prevent the employees' culpable act in the selection or supervision of them.

38. Lithuania reported that its domestic legal system did not foresee any provision on corporate criminal liability, but that the draft criminal code, under discussion at the moment of the preparation of its reply, included such a provision. In Luxembourg, on the basis of article 203 of the Commercial Company Act, the courts could order the winding-up or liquidation of a company that conducted business in breach of criminal law. In New Zealand, the Interpretation Act of 1999 provided that all criminal statutes were presumed to apply to legal bodies (such as companies, including state-owned or state-controlled companies), as well as to natural persons. In Nigeria, corporate criminal liability was established by the Money Laundering Decree and in Norway by section 48 A of the Penal Code.

39. Panama reported that, on the basis of article 125 of its Criminal Code, companies were liable for punishable acts committed by their managers, administrators or legal representatives involving abuse of office in the performance of their official functions. In Slovenia, the Liability of Legal Persons for Criminal Offences Act of 1999 established that a legal person was liable for a criminal offence in the name of, on behalf of or in favour of a legal person: (a) if the criminal offence committed meant carrying out an illegal resolution, order or endorsement of its management and supervisory bodies; (b) if its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence; (c) if it had at its disposal illegally obtained property gains or used objects gained through a criminal offence; and

(d) if its management or supervisory bodies omitted obligatory supervision of the legality of the actions of the employees subordinate to them. Legal persons were liable among others also for corruption criminal offences. Sanctions that could be imposed on legal persons included fines, expropriation of property gains or termination of legal entity status, as well as special safety measures, such as the publication of the judgement and prohibition of a certain economic activity.

40. Trinidad and Tobago reported that the Fourth Schedule of the Exchange Control Act, chapter 79:50, provided that a corporate body might be held criminally liable on summary conviction to a fine of 5,000 Trinidad and Tobago dollars (TT$), and on conviction of indictment to a fine of TT$ 10,000 if found guilty of an offence under the Act. Sections 508-511 of the Companies Act, chapter 88:01, outlined offences for which corporate firms could be held criminally liable. These included, inter alia, the abuse of corporate status, the making of untrue statements or facts and the omission of material statements or facts by companies in their reports, returns, notices or other documents. With regard to corporate criminal liability in respect of international commercial transactions, Trinidad and Tobago indicated that there was not yet a relevant legislative provision, but that new draft legislation was pending.

41. In the United Arab Emirates, the liability of legal persons was regulated by the Law on Commercial Companies, issued by virtue of Federal Law No. 8 of 1984 and amended by Federal Laws No. 13 of 1988 and No. 4 of 1990, and in Yemen by Crime and Penalty Law No. 12 of 1994, Presidential Decree Law No. 37 of 1992 on Supervision and Control over Foreign Companies and Business, together with its Executive Act issued by Presidential Decree No. 192 of 1999.

42. Under the legal system of the United Kingdom, it was an accepted principle that any reference to "person" included a legal as well as a natural person.

F. Legislation against money-laundering

43. The domestic legislation of almost half of the States that responded to the survey did not include bribery of foreign public officials among the predicate offences in the legislation against money-laundering.[23]

44. Among the States whose domestic legislation included such a provision, Austria indicated that bribery offences were explicitly mentioned as predicate offences in the text of the relevant provision of the Austrian Penal Code (sect. 165, "Money laundering"). In Bulgaria, according to article 253 of the Criminal Code, there were no restrictions concerning the predicate offences for money-laundering and that the bribery of foreign public officials was therefore regarded as a predicate offence for money-laundering. Under the Corruption of Foreign Public Officials Act of Canada, it was an offence to possess or to launder property and proceeds obtained or derived from bribing a foreign public official.

45. Croatia reported that article 279 of the Penal Law, relating to money-laundering, established that any offence for which imprisonment of five years could be imposed and any offence committed by a group or criminal organization could be considered a predicate offence for money-laundering. According to the domestic law of the Czech Republic, any economic benefit derived from activity that constituted a criminal offence was subject to the anti-money-laundering legislation.

46. In Iceland, article 264, paragraph 1, of the Penal Code provided that whoever received or procured for himself or herself or others any gain from an offence committed against the Code should be fined and imprisoned for up to two years. Bribery of a public official could be a predicate offence in the context of money-laundering. This applied equally to bribery of domestic and of foreign public officials. The Icelandic criminal law applied in the case of a violation of article 264 of the Penal Code committed in Icelandic territory, even if the predicate offence was committed abroad, and irrespective of the offender's identity. The location where the offence of bribery was committed had no bearing on the criminality of the act of money-laundering.

47. Singapore indicated that corruption, which under domestic law also included bribery of foreign public officials, was one of the predicate offences in the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act. Slovenia affirmed that this issue was regulated by article 252 of the Penal Code. Money-laundering legislation in the United Kingdom provided that all indictable offences (i.e. offences that could be tried in Crown Court) were

predicate offences. In Yemen, the bribery of foreign public officials as a predicate offence for money-laundering was established under Crime and Penalty Law No. 12 of 1994 and Law No. 6 of 1995 on the prosecution of persons holding high-ranking public office of the executive or other authority of the State.

G. Accounting standards, business codes, standards and best practices

48. Austria, Bulgaria, Canada, Colombia, Germany, Greece, Guyana, Japan, Lithuania, Malta, Mauritius, Singapore, Slovenia, Sweden, Trinidad and Tobago and Yemen reported that they had developed or maintained accounting standards and practices that had improved the transparency of international commercial transactions during the period from 1997 to 1999.[24]

49. Austria indicated that, according to the regulations of the Austrian Commercial Code, which entered into force on 1 July 1996, each joint stock company was obliged to submit its balance sheet to the commercial register in order to be made public. In Bulgaria, the Accountancy Law, amended in 1998, provided for the observation of standards and practices in order to ensure the transparency of any transactions of enterprises. During the period from 1997 to 1999, the following Handbook Sections were released by the Canadian Institute of Chartered Accountants: (a) *Segment Disclosures*; (b) *Income Taxes*; (c) *Cash Flow Statements*; and (d) *Employee Future Benefits*.

50. Colombia indicated that it had internal regulations aimed at establishing uniform and transparent accounting mechanisms. All traders, for example, were obliged to keep books of account and the organizational regulations of the financial system established the single accounts plan whereby the book-keeping of supervised financial entities had to be carried out in the same manner and follow the same procedure. Those regulations required financial entities to establish mechanisms for the prevention of unlawful activities, such as those committed by persons using the financial system in order to conceal criminal operations. In addition, the Penal Code established the offence of money-laundering, which was deemed committed even if it was prepared abroad. Finally, the Anti-Corruption Statute (Law No. 190 of 1995) established certain accounting control systems in order to make the activities of specific corporate entities more transparent. The Law empowered the Government to issue regulations so that audit operations assisted in the detection and discovery of situations that might constitute practices in breach of the provisions or principles of the Anti-Corruption Statute. Chapter VIII of the Statute contained provisions regarding financial inspections whose purpose was to prevent payments by foreign corporate entities to government officials.

51. Lithuania noted that the transparency of international commercial transactions was promoted by the Law on Declaration of Property and the Income by Residents, the Law on the Prevention of Money-Laundering and the Law on Public Procurement, while Luxembourg indicated that a legislative bill providing for the introduction of a minimum standardized accounting plan had been submitted to the Chamber of Deputies.

52. According to the legislation of Malta, the Financial Services Centre carefully monitored accounting standards. Since 1989, the Accounting and Auditing Standards Committee had been working in Mauritius to formulate and publish accounting and auditing standards.

53. In Singapore, commercial companies had adopted the statements of accounting standards issued by the Institute of Certified Public Accountants, the national organization of the accounting profession in Singapore. As far as government accounting was concerned, Singapore subscribed to the special data dissemination standard developed by the International Monetary Fund. In 1995, the Auditing Institute of Slovenia issued the Code of Accounting Principles and the Code of Professional Ethics of Accountants. According to accounting legislation in Sweden, business transactions must be recorded in chronological order and in a systematic manner and vouchers must be available to support all accounting entries.

54. Trinidad and Tobago reported that it maintained accounting standards and practices that had been formulated by the International Accounting Standards Committee. Those standards had been adopted and implemented by the Institute of Chartered Accountants of Trinidad and Tobago and must satisfy recognition, measurement, presentation and disclosure requirements.

55. Several countries that had improved the transparency of international commercial transactions in the period from 1997 to 1999 indicated that their respective accounting standards and practices were in compliance with the standards developed by the following international organizations: the Council of Europe (Bulgaria and Lithuania), the European Union (Austria, Bulgaria, Greece and Sweden), the Organisation for Economic Cooperation and Development (Bulgaria and Germany), the Financial Action Task Force on Money Laundering (Greece, Lithuania and Trinidad and Tobago), the International Monetary Fund (Singapore) and the International Accounting Standards Committee (Canada, Singapore, Sweden and Trinidad and Tobago).

56. Austria, Cameroon, Canada, Colombia, Germany, Greece, Japan, Iraq, Lithuania, Luxembourg, Myanmar, Norway, Slovenia, Trinidad and Tobago, the United Kingdom and Yemen reported that in the period from 1997 to 1999 they had developed or encouraged the development of business codes, standards and best practices prohibiting corruption, bribery and other related illicit practices in international commercial transactions.[25] Those codes and best practices were in line with the standards developed by the following intergovernmental organizations: the Caribbean Financial Action Task Force (Trinidad and Tobago), the Council of Europe (Lithuania and Norway); the European Union (Greece and Norway), the Financial Action Task Force on Money Laundering (Lithuania and Trinidad and Tobago), and the Organisation for Economic Cooperation and Development (Germany, Japan and Norway).

H. Mutual legal assistance, extradition and enforcement cooperation

57. Between 1997 and 1999, the following States received requests for mutual legal assistance from other countries in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions: Austria, Brazil, Brunei Darussalam, Italy, Lebanon, Lithuania, Luxembourg, Nigeria, Norway, Poland, Singapore, Slovenia, South Africa (39), Switzerland (over 100) and United Kingdom.[26]

58. During the same period of time, the following countries made requests for mutual legal assistance from other countries in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions: Brunei Darussalam, Italy, Lebanon, Nigeria, Norway (25), South Africa, Switzerland (less than 10) and United Kingdom.[27]

59. From 1997 to 1999, requests for extradition from other countries in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions were received from Austria, Italy, Lebanon, Nigeria, South Africa (59), Switzerland, Trinidad and Tobago, the United Kingdom and Yemen (70),[28] while requests for extradition were made by Argentina, Italy, Lebanon, Nigeria, South Africa (19), Switzerland, the United Kingdom and Yemen.[29]

60. In many of the States responding, domestic legislation allowed law enforcement authorities to share information directly with law enforcement authorities of other countries without the conclusion of treaties of mutual legal assistance.[30]

61. Regarding the conditions under which such information was shared, Argentina, Brazil, the Czech Republic, Germany, Greece, Guatemala,[31] Malta, Nigeria and Slovenia indicated that the direct sharing of information with enforcement authorities in other countries, without the conclusion of treaties of mutual legal assistance, was subject to the existence of a condition of reciprocity. Lebanon, Mauritius, Saudi Arabia and South Africa replied that the direct exchange of information was undertaken through the channels of the International Criminal Police Organization (Interpol).

62. In Colombia, in cases where a mutual legal assistance treaty or agreement did not exist, the judicial authority might have recourse to the provisions of the Code of Criminal Procedure. In Japan, law enforcement authorities might share information with their foreign counterparts without a formal mutual legal assistance request, unless the information was sought as evidence. In Switzerland, the issue was regulated by article 67 (a), on voluntary transmission of evidence and information, of the Federal Law on International Mutual Legal Assistance in Criminal Matters, while in Singapore such an exchange of information was allowed only on a case-by-case basis and for purposes of investigation and intelligence.

63. Trinidad and Tobago noted that the Mutual Assistance in Criminal Matters Act No. 39 of 1997 had been enacted to regulate mutual assistance matters between the country and the other Commonwealth countries. Assistance was provided for under the Act in criminal matters with respect to the following instances: obtaining evidence; locating or identifying a person; obtaining articles or things through search and seizure; serving documents; transmission and return of documents; tracing documents; obtaining restraining orders; and securing transfer of a prisoner. In the United Kingdom, the absence of treaties and conventions was no hindrance to offering assistance to another country, as long as the request for assistance met the criteria of the Criminal Justice Act of 1990.

64. Argentina, Brazil, Bulgaria, Costa Rica, the Czech Republic, Germany,[32] Greece, Iceland,[33] Nigeria, Norway and Slovenia reported that in the period from 1997 to 1999 they had adopted legislation concerning law enforcement cooperation to combat corruption and bribery in international commercial transactions,[34] while Costa Rica, the Czech Republic, Germany, Luxembourg, Mauritius, New Zealand, Norway, Poland, Slovenia, Sweden, the former Yugoslav Republic of Macedonia and Yemen indicated that, in the same period, draft legislation had been proposed and its formal enactment was pending.[35]

I. Adherence to relevant international treaties

65. Because of the time lapse between the receipt of the responses to the survey and the preparation of the present report, the information on the status of adherence (i.e. signature and ratification) to the existing international legal instruments against corruption may have changed considerably. In that connection, the attention of the Commission on Crime Prevention and Criminal Justice is drawn to the report of the Secretary-General of 2 April 2001 on existing international legal instruments, recommendations and other documents addressing corruption (E/CN.15/2001/3), submitted to the Commission at its tenth session, which contains more recent information on the status of signatures and ratification of the existing conventions against corruption.

66. During the period from 1997 to 1999, Argentina, Austria, Brazil, Bulgaria, Canada, the Czech Republic, Germany, Greece, Iceland, Italy, Japan, Lithuania, Norway, Slovenia, Sweden, Switzerland and the former Yugoslav Republic of Macedonia adopted legislation concerning effective implementation of the principal existing international instruments relating to the various aspects of the problem of corruption and bribery in international commercial transactions.[36]

67. Bulgaria, Croatia, the Czech Republic, Italy, Lebanon, Lithuania, Luxembourg, Mauritius, New Zealand, Norway, Poland, Slovenia, the former Yugoslav Republic of Macedonia and the United Kingdom indicated that during the same period they had proposed such legislation, which was still pending.[37]

III. Conclusions

68. Although it is difficult to ascertain whether the adoption by the General Assembly of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions has had a direct impact on domestic legislation, the analysis of the replies to the survey indicates that the main principles and provisions embodied in the Declaration are reflected, to different degrees and with different modalities, in the implementation of legislation at the national level in many States.

69. The signature and ratification of the existing international legal instruments against corruption, which have been negotiated and adopted under the aegis of different intergovernmental organizations in recent years and which refer to the principles of the Declaration, will undoubtedly foster and strengthen its application at the domestic level.

70. It is also to be hoped that the content and the spirit of the Declaration will inspire the negotiations of the United Nations Convention against Corruption, which started in January 2002.

Notes

[1] Argentina, Austria, Bulgaria, Canada, Colombia, Costa Rica, the Czech Republic, Germany, Greece, Iceland, Iraq, Italy, Japan, Lebanon, Mauritius, Myanmar, Nigeria, Norway, Panama, Peru, Singapore, Slovenia,

Sweden, Switzerland, the United Kingdom and Yemen. Brazil, Guyana and Saudi Arabia replied that information was not available.

[2] E/1996/99, annex.

[3] Belarus, Cameroon, Guatemala, Iraq, Lebanon, Mali, Malta, Nigeria, Panama and Saudi Arabia replied that information was not available in connection with the question whether their country had adopted legislation to combat corruption and bribery in international commercial transactions.

[4] Argentina, Austria, Bulgaria, Cameroon, Canada, the Czech Republic, Germany, Greece, Iceland, Iraq, Italy, Japan, Kazakhstan, Lebanon, the Niger, Nigeria, Norway, Saudi Arabia, Singapore, Slovenia, South Africa, Sweden, Switzerland, Trinidad and Tobago, the United Kingdom and Yemen. Brazil, Guyana and the former Yugoslav Republic of Macedonia replied that information was not available.

[5] Germany indicated that sentences of imprisonment could not be imposed on legal persons and associations. They could only receive a non-criminal fine.

[6] A sentence of life imprisonment or imprisonment for an indefinite period could be imposed only by the Supreme Court.

[7] Cameroon, Canada, the Czech Republic, Germany, Iraq, Japan, Kazakhstan, Lebanon, the Niger, Nigeria, Norway, Saudi Arabia, Slovenia, South Africa, Sweden, Trinidad and Tobago, the United Kingdom and Yemen

[8] These are disciplinary measures that the Public Service Commission can impose under Regulation 110.

[9] Austria, Brazil, Bulgaria, the Czech Republic, Germany, Greece, Iraq, Kazakhstan, Saudi Arabia, South Africa, Sweden, the United Kingdom and Trinidad and Tobago replied that information on whether any prosecution was undertaken between 1996 and 1998 for the offence of bribery of foreign public official was not available. Austria, Brazil, Belarus, Bulgaria, Colombia, the Czech Republic, Germany, Greece, Iraq, Saudi Arabia, South Africa, Sweden, Switzerland, Trinidad and Tobago and the United Kingdom replied that information on whether any sentence was pronounced between 1996 and 1998 for this offence was not available.

[10] Some 36 prosecutions in 1996, 29 prosecutions in 1997 and 19 prosecutions in 1998.

[11] Some 16 prosecutions in 1996, 20 prosecutions in 1997 and 35 prosecutions in 1998.

[12] Some 19 sentences in 1996, 13 sentences in 1997 and 15 sentences in 1998.

[13] Brazil, Colombia, the Czech Republic, Germany, Greece, Japan, Iraq, Kazakhstan Saudi Arabia, Singapore, South Africa, Switzerland, Trinidad and Tobago and Yemen replied that information was not available in this connection.

[14] Algeria, Brazil, Brunei Darussalam, Cameroon, Croatia, Greece, Guyana, Italy, Lebanon, Lithuania, Luxembourg, Mali, Malta, Mauritius, New Zealand, the Niger, Panama, Poland, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, the United Arab Emirates and Yemen. Luxembourg and New Zealand indicated that a law disallowing tax deductibility for payments outside the country that would constitute bribes or other inappropriate payments to foreign public officials was pending. Belarus, Iraq, Kazakhstan, Myanmar, Saudi Arabia and Singapore indicated that no information was available in this connection. It should be noted that question 10 of the questionnaire in the Spanish translation was formulated as follows: "Are provisions included in your legislation and/or regulatory measures to make it to *possible* for individuals to obtain tax benefits or deductions for payments outside their countries that would constitute bribes or other inappropriate payments to foreign public officials?" Argentina, Colombia, Costa Rica and Guatemala replied "no" to the question so formulated.

[15] See section 3 of the Corruption of Foreign Public Officials Act.

[16] Article 9 of the Personal Income Tax, the Corporate Profit Tax Act, the Accountancy Act, as well as article 240 of the Slovenian Penal Code.

[17] Algeria, Argentina, Brazil, Brunei Darussalam, Bulgaria, Colombia, Costa Rica, Croatia, Greece, Guyana, Iceland, Iraq, Kazakhstan, Lebanon, Lithuania, Luxembourg, Mali, Malta, Myanmar, New Zealand, the Niger, Nigeria, Panama, Peru, Saudi Arabia, South Africa, Trinidad and Tobago, the former Yugoslav Republic of Macedonia, the United Kingdom and Yemen. Norway replied that no information was available in connection with the question whether illicit enrichment by a public official was an offence under national legislation.

[18] Algeria, Argentina, Brazil, Brunei Darussalam, Bulgaria, Colombia, Greece, Guyana, Iceland, Iraq, Kazakhstan, Lebanon, Lithuania, Luxembourg, Mali, Malta, Myanmar, New Zealand, the Niger, Nigeria, Panama, Peru, South Africa, Trinidad and Tobago, United Kingdom and Yemen. Myanmar, Norway, Saudi Arabia and the former Yugoslav Republic of Macedonia replied that no information was available in connection with the question whether the illicit enrichment by elected representatives was an offence under national legislation.

[19] The President of the Republic, the Vice-President, senators, representatives, governors, deputies of departmental assemblies, mayors and councillors.

[20] Algeria, Austria, Cameroon, Canada, Colombia, Germany, Guyana, Iceland, Iraq, Italy, Japan, Lebanon, Luxembourg, New Zealand, the Niger, Nigeria, Norway, Panama, Saudi Arabia, Singapore, Slovenia, South Africa, Sweden, the United Arab Emirates, the United Kingdom and Yemen. Brazil, Mauritius and Myanmar indicated that no information was available in this connection.

[21] *Official Journal C221*, 19 July 1997, pp. 0012-0022.

[22] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

[23] Algeria, Argentina, Belarus, Brunei Darussalam, Cameroon, Colombia, Costa Rica, Croatia, Guatemala, Guyana, Lebanon, Lithuania, Luxembourg, Mali, Malta, Mauritius, New Zealand, Panama, Poland, South Africa, the former Yugoslav Republic of Macedonia, Trinidad and Tobago and the United Arab Emirates. Luxembourg, New Zealand and Poland indicated that legislation that would establish the bribery of a foreign public official as a predicate offence under their respective money-laundering legislation was pending. Brazil, Iraq, Myanmar and Saudi Arabia replied that no information was available in this connection.

[24] Belarus, Brazil, Croatia, Iraq, Kazakhstan, Mali, the Niger, Norway, Saudi Arabia and South Africa replied that no information was available in this connection.

[25] Algeria, Argentina, Brunei Darussalam, Croatia, the Czech Republic, Guatemala, Lebanon, Mauritius, New Zealand, the Niger, Panama, Poland, Singapore, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and the United Arab Emirates replied that no information was available in this connection.

[26] Argentina, Belarus, the Czech Republic, Germany, Iraq, Kazakhstan, Mali, Saudi Arabia, the former Yugoslav Republic of Macedonia and Yemen replied that no information was available in connection with the question whether their country had received between 1997 and 1999 requests for mutual legal assistance from other countries in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions.

[27] Argentina, Austria, Belarus, Colombia, the Czech Republic, Germany, Kazakhstan, Mali, Saudi Arabia, Slovenia, Sweden, the former Yugoslav Republic of Macedonia and Yemen replied that no information was available in connection with the question whether their country had made between 1997 and 1999 requests for mutual legal assistance from other countries in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions.

[28] Argentina, Belarus, the Czech Republic, Kazakhstan, Germany, Mali, Myanmar, South Africa, Slovenia, Sweden and the former Yugoslav Republic of Macedonia replied that no information was available in connection with the question whether their country had received between 1997 and 1999 requests for extradition from other countries in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions.

[29] Austria, Belarus, the Czech Republic, Germany, Kazakhstan, Mali, Saudi Arabia, Slovenia, Sweden and the former Yugoslav Republic of Macedonia replied that no information was available in connection with the question whether their country had made between 1997 and 1999 requests for extradition from other countries in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions.

[30] Argentina, Austria, Brazil, Bulgaria, Canada, Colombia, Croatia, the Czech Republic, Germany, Greece, Guatemala, Iceland, Japan, Kazakhstan, Lebanon, Malta, Mauritius, New Zealand, the Niger, Nigeria, Norway, Peru, Poland, Saudi Arabia, Singapore, Slovenia, South Africa, Switzerland, Trinidad and Tobago, the United Kingdom and Yemen. Myanmar replied that no information was available in this connection.

[31] Guatemala indicated that the sharing of information was possible only if the data in question were not confidential and provided also that the sharing did not prejudice any investigation carried out in the country.

[32] Germany indicated that the new legislation was related to the implementation at the national level of the Criminal Law Convention on Corruption of the Council of Europe and of the Joint Action on Corruption in the Private Sector of the European Union.

[33] Iceland indicated that on 25 March 2001 it had become a member of the Schengen Agreement. In its reply, Iceland stressed that, according to article 39 of the Agreement, contracting parties undertook to ensure that their police authorities assisted each other for the purposes of preventing and detecting criminal offences, which included also combating corruption and bribery in international commercial transactions. Iceland also indicated that it was a member of the Police and Customs Cooperation in the Nordic Countries and that it had signed an agreement with the European Police Office (EUROPOL) that strengthened police cooperation between Iceland and the other member States of EUROPOL.

[34] Colombia, Iraq, Kazakhstan, Mauritius, Myanmar and Saudi Arabia indicated that no information was available in connection with the question whether their country had adopted legislation concerning law enforcement cooperation to combat corruption and bribery in international commercial transactions.

[35] Belarus, Brazil, Bulgaria, Cameroon, Canada, Colombia, Guyana, Iraq, Kazakhstan, Mali, Nigeria and Saudi Arabia replied that no information was available in this connection.

[36] Belarus, Guatemala, Iraq, Kazakhstan, Mali, Mauritius, Saudi Arabia, Singapore and Yemen replied that no information was available in this connection.

[37] Belarus, Brazil, Kazakhstan, Mali, Panama, Saudi Arabia, Singapore and Yemen replied that no information was available in this connection.